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## UTOPIA and the Law and Literature Movement

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## Symposium—UTOPIA500

### UTOPIA and the Law and Literature Movement\*

Michael P. Malloy\*\*

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The year 2016 marks the quincentennial of the publication of Thomas More's novel *Utopia*.<sup>1</sup> In addition to being an important literary milestone and cultural artifact, *Utopia* represents a significant marker in the history of political and legal philosophy. I would argue that it also provides an important contribution to the law and literature movement that has flourished in recent decades. It is that contribution that I wish to explore.

This paper begins with a brief introduction to the law and literature movement, in which I identify some of the objectives of the movement and the relationship of More's novel to those objectives.<sup>2</sup> It then explores three interrelated themes: (1) the meaning and implications of the concepts of *utopia* and *dystopia*<sup>3</sup>; (2) the status of More's novel as a precursor to post-modernist literature<sup>4</sup>; and (3) the linguistic transformation of the concept of *utopia* from its original context to contemporary meanings that are often entirely independent of More's novel.<sup>5</sup> I conclude by arguing that More's novel is a richer and more sophisticated literary achievement than we may realize, but that this has been obscured by the kidnapping of the concept *utopia* by both literary successors and popular culture.<sup>6</sup> Five hundred years out, it is time to reread and recapture this literary and legal classic on its own terms.

## I. INTRODUCTION

In the first three decades of the last century, John Henry Wigmore—master of evidence law, dean of Northwestern—was largely responsible for the academic linkage of law and literature.<sup>7</sup> In addition to compiling and revising lists of recommended legal novels,<sup>8</sup> Wigmore was one of the first to make the

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1. THOMAS MORE, *Libellus vere aureus, nec minus salutaris quam festivus, de optimo rei publicae statu deque nova insula Utopia* (1516) (“A truly golden booklet, no less beneficial than entertaining, of a republic’s best state and of the new island Utopia”). Quotations from UTOPIA in this article are taken from THOMAS MORE, UTOPIA (Clarence H. Miller trans., Yale Nota Bene, 2001) [hereinafter UTOPIA]. A complete online edition of UTOPIA, edited in 2012 and including related letters, commentary, and marginal notes that were included in the first four printings (1516–1518) is available at <http://theopenutopia.org/full-text/introduction-open-utopia/>.

2. See *infra* Part I.

3. See *infra* Part II.A.

4. See *infra* Part II.B.

5. See *infra* Part II.C.

6. See *infra* Part III.

7. Richard H. Weisberg, *Wigmore and the Law and Literature Movement*, 21 LAW & LITERATURE 129, 134 (2009).

8. John H. Wigmore, *A List of Legal Novels*, 2 ILL. L. REV. 574 (1908) (including a list of “legal novels” and the criteria for selecting them). See also John H. Wigmore, *A List of 100 Legal Novels*, 17 ILL. L. REV. 26 (1922) (reprinting and expanding list). Strangely enough, Wigmore’s lists did not include More’s UTOPIA, although the list seemed to have plenty of room for negligible and now rightly obscure titles. Wigmore’s choices were nothing if not idiosyncratic. For example, while he understandably includes Sherlock Holmes, *Memoirs and Adventures* (see Wigmore, 17 ILL. L. REV. at 589), in the same breath he includes to no point A. Conan Doyle’s historical novels THE FIRM OF GIRDLESTONE AND MICAH CLARKE. *Id.* On the continuing

active study of literature an element of legal education. During his tenure at Northwestern, reading selected novels was a requirement for incoming law students.

It was Wigmore's hope and expectation that exposure to literature would continue throughout a lawyer's career.<sup>9</sup> Wigmore believed that lawyers and judges needed to read novels throughout their professional careers as a continuing professional duty.<sup>10</sup> His reasoning was that there was a critical need for the "democratization" of the lawyer's perspective through great literature,<sup>11</sup> and perhaps even more importantly, for the refinement of professional skills through an understanding of the human reality that confronts the lawyer in practice.<sup>12</sup>

As it has matured in the years since Wigmore, competing approaches have emerged within the Law and Literature Movement. These various approaches share the assumption that studying the intersection of law and literature in some way enhances one's understanding of the law and its processes.<sup>13</sup> Beyond that common assumption, however, there is a diversity of approaches. In line with Wigmore's original insight, one camp looks to the enculturating effects of the study of law and literature—creating a more culturally sensitive, more "complete" lawyer.<sup>14</sup> Another camp essentially views the study of law and literature as rhetoric and poetics—a study of well-considered speech and argumentation as an aid to the lawyer's development.<sup>15</sup> A third approach, based in "story-telling" techniques, sees leading examples of law in literature as providing rich and nuanced hypotheticals from which to begin rigorous discussion of important legal issues.<sup>16</sup> Finally, there is a group, with which I would align myself, who believes that the study of law and literature may provide an occasion for reflection—literally and figuratively—on the life of the law.<sup>17</sup>

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significance of Holmes, see Michael P. Malloy, *Notes on the Identity of Milverton's Murderer*, 27 BAKER ST. J. 198 (1977).

9. Weisberg, *supra* note 7, at 130.

10. *Id.*

11. *Id.* at 133.

12. *Id.*

13. See, Robert Weisberg, *The Law-Literature Enterprise*, 1 YALE J. L. HUMAN. 1 (1988). See also, Benjamin N. Cardozo, *Law and Literature*, reprinted in SELECTED WRITINGS OF B. N. CARDOZO 338–428 (Margaret Hall ed., 1947). See also, Weisberg, *supra* note 7, at 134–35.

14. Cf. Weisberg, *The Law-Literature Enterprise*, *supra* note 13 (criticizing this approach). *Contra*, Richard Weisberg, *Family Feud: A Response to Robert Weisberg on Law and Literature*, 1 YALE J.L. HUMAN. 69 (1988) (disputing "enculturating" characterization of law and literature movement).

15. See, e.g., Cardozo, *supra* note 13, at 338–428 (arguing for literary disciplines as source of professional technical and stylistic mastery).

16. As Richard H. Weisberg has argued, "the telling of stories—the creation of structured language to move an account from beginning to middle to end—links uniquely the medium of literary fiction to the everyday stuff of legal expression." Weisberg, *supra* note 7, at 134–35.

17. Cf., e.g., *id.* at 133 (suggesting that, "reading fiction leads to a more ethical and empathic understanding of law and its systems," if rigorous "interpretive element" is applied).

In this fourth sense, a law and literature seminar is not merely a “perspectives course,” but also and perhaps essentially a course within the Professional Responsibility curriculum. Repeatedly in our seminar discussions, a dialogue has emerged over the responsibilities and roles of the lawyer in his or her legal, political, social, and personal environments. To gather together the threads of these various issues and to focus the discussion intensely on what iconic works of literature can tell us about the life of the law and the responsibility of the lawyer is, in my view, a significant contribution to a lawyer’s education.

What, then, is the place of More’s *Utopia* in the study of law and literature? At one level, the answer would seem obvious. Thomas More is likely one of the few authors one would read in such a course who was simultaneously a practicing attorney. And what an attorney! Heavy case load, as he reminds us at the beginning of the book,<sup>18</sup> diplomatic trade missions,<sup>19</sup> successively undersheriff of London,<sup>20</sup> adviser to the King<sup>21</sup>—ghostwriter to the King, if legend is to be believed<sup>22</sup>—member of the King’s council, knight, Speaker of the House of Commons, Lord Chancellor of England, convicted traitor,<sup>23</sup> martyr, saint.

In the course of this busy career, in his spare time, he writes a little book (*libellus*, as he calls it). It is—though this may be disputed by some superficial readers—a tremendously *ironic* book. It becomes the fountainhead of an entire thematic tradition in world literature—utopian literature,<sup>24</sup> and *dystopian* literature<sup>25</sup> as well.

On its own terms, is More’s *Utopia* a significant work of law and literature? I believe a strong case can be made for it. The book, particularly the first of its two parts, presents some subtle and insightful views into the life of the lawyer. It provides a very realistic account of the professional life of a skilled practitioner, as well as an unpretentious and ironic view of the practitioner’s character and personal experiences. The fictional More—who may or may not be a true spokesman for the author More—is personable, thoughtful and sometimes ambivalent about the life of the law, and occasionally amusing.

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18. UTOPIA, *supra* note 1, at 4.

19. *Id.* at 9 and accompanying note 26.

20. As undersheriff, More presided over a court at one of the Sheriff’s jails, where he would have heard minor cases. *Id.* at 142, note 1.

21. More became a member of the king’s council in 1518. *Id.* at ix.

22. The 1521 text *Assertio Septem Sacramentorum*, a theological treatise by Henry VIII formally responding to Martin Luther’s criticisms of Church practices, is believed to have been written with More’s assistance. See PETER ACKROYD, THE LIFE OF THOMAS MORE (1999).

23. For a dramatic rendition of More’s trial and conviction, See R. BOLT, A MAN FOR ALL SEASONS (Knopf Doubleday, 1989).

24. On the meaning of *utopian* in this sense, see text *infra* at notes 85–96.

25. On the meaning of *dystopian* in this sense, see text *infra* at notes 105–06.

Consider More's depiction of the daily life of a serious practitioner:

I am constantly pleading one case, hearing another, acting as arbitrator, handing down decisions as a judge, visiting one person or another on business or because it is my duty to do so; I am out practically all day dealing with others, and the rest of my time is devoted to my family, and so I leave nothing for myself, that is for writing. . . .

When do I write then? And as yet I have said nothing about sleep and nothing at all about eating, and for many that takes up no less time than sleep itself, which consumes almost half our lives. The only time I get for myself is what I steal from sleep and eating. Because that is so little, I progressed slowly, but because it was at least something, I did make progress . . . .<sup>26</sup>

That lament would find resonances in the lives of many practitioners. It may also explain the root cause of the departure of more than a few serious lawyers for the shores of academia. Beyond the presentation of a realistic professional role model,<sup>27</sup> however, the book as a whole raises a wide range of legal and policy issues, many of which remain contentious in contemporary society. Consider just a brief catalog of the law-related issues touched upon in the character More's discussions with Hythloday.

In swift succession, Book 1 of *Utopia*—arranged as a dialogue between More and Raphael Hythloday, with occasional remarks by More's friend Peter Giles—touches upon such ideas as the societal roots of crime<sup>28</sup> and the role and frustrations of policy advisers.<sup>29</sup> More and Hythloday oppose each other on a number of issues in the course of the dialogue.<sup>30</sup> For example, Hythloday makes a spirited, if somewhat abstract, attack on private property as detrimental to the common good.<sup>31</sup> More responds with a defense of the institution that is on the one hand an argument about private property as an incentive, and on the other hand an insistence that the institution indirectly supports public order and respect for public authority.<sup>32</sup> Neither side seems very hopeful about altruism in human nature.

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26. *UTOPIA*, *supra* note 1, at 4.

27. Cf. William H. Pryor Jr., *Moral Duty and the Rule of Law*, 31 HARV. J. L. & PUB. POL'Y 153, 154 (2007) ("Robert Bolt's portrait of Saint Thomas More offers lawyers and judges the right role model").

28. See, e.g., *UTOPIA*, *supra* note 1, at 25 ("what else are you doing . . . but making them into thieves and then punishing them for it?").

29. *Id.* at 35–43.

30. *UTOPIA*, *supra* note 1, at 46–48.

31. *Id.*

32. *Id.* at 48:

[N]o one can live comfortably where everything is held in common. For how can there be any abundance of goods when everyone stops working because he is no longer motivated by making a profit, and grows lazy because he relies on the labors of others. And then, when people are driven by want and there is no law which enables them to keep their acquisitions for their own use, wouldn't everyone necessarily suffer from continual bloodshed and turmoil. Especially when the magistrates

Hythloday speaks at length about the Utopian contempt for gold and silver as a medium of exchange<sup>33</sup> (except for hiring mercenaries).<sup>34</sup> He continues on this theme in Book 2, where he explains the domestic use of gold for chamberpots and infant toys.<sup>35</sup> Land is the medium for productivity and the store of value, rather than gold and silver.<sup>36</sup>

Book 2—essentially an extended description of Utopian life and institutions by Hythloday—expands on some of the social and political themes raised in Book 1, but generally expresses uncritical admiration for societal norms in Utopia. Land may be a store of value, but holding it unproductively is punishable under Utopian law with seizure and redistribution.<sup>37</sup> Public corruption and attempts to establish tyrannical rule are also severely punished, often with removal from office or death.<sup>38</sup> Hythloday's admiration for Utopia is not dimmed by the harsh regimentation of land use, nor by Utopia's maintenance of a slave class<sup>39</sup> and a penal system that often imposes slavery as punishment.<sup>40</sup> Likewise, marriage and family law tend to be dehumanizing and antithetical to any idea of personal privacy or individual determination.<sup>41</sup>

Hythloday expresses a well-worn antipathy for the law and lawyers, referring in passing to the “trick of the law (which turns things topsy-turvy no less than Fortune herself).”<sup>42</sup> It is a sentiment he shares with Utopians, for he explains:

They have very few laws, for very few suffice for persons trained as they are. . . . Moreover, they ban absolutely all lawyer as clever practitioners and sly interpreters of the law.<sup>43</sup>

This ultra-populist attitude might be worthy of Dick the Butcher,<sup>44</sup> but it seems anomalous in a description of an admirable society. These remarks occur in Book 2 of *Utopia*, essentially an uninterrupted tour of the country with Hythloday as the guide. At the end, however, More generally dismisses “quite a

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no longer have any respect or authority, for I cannot see how they could have any among people who are placed on one level.

33. *Id.* at 42–43.

34. *See id.* at 74 (“[T]hat is the only reason they keep all of the treasure which they have at home. . . . They use it especially to pay enormous wages to foreign mercenaries.”).

35. *Id.* at 75–78.

36. *Id.* at 67.

37. *Id.*

38. *Id.* at 59.

39. *See, e.g., id.* at 54, 95–96.

40. *See, e.g., id.* at 72–73.

41. *Id.* at 97–101.

42. *Id.* at 79.

43. *Id.* at 101.

44. *See* WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY VI*, act IV, sc. 2, l. 2379 (“The first thing we do, let’s kill all the lawyers.”).

few institutions established by the customs and laws of that nation which seemed to me quite absurd.”<sup>45</sup>

## II. MORE’S UTOPIA

A proper understanding of the concept of *utopia* as well as *dystopia*, both in literary terms and in common contemporary usage, would certainly enhance one’s appreciation of More’s novel and the social and political issues that it raises. Such an understanding may, I believe, be the first step in assessing More’s literary achievement in writing this work. Furthermore, an understanding of More’s intentions as an author may aid us in decoding the varied and often contradictory uses of these concepts in contemporary thought and public discourse. We begin, therefore, by examining the meaning and implications of *utopia* and *dystopia*.

### A. *Utopia* v. *Dystopia*

The obvious fact is that More coined the term *utopia*, an elaborate play on words, which he acknowledged in the text itself.<sup>46</sup> *Utopia*, from the Greek, is *no place*.<sup>47</sup> Is it intended as a hypothetical or unattainable ideal? More does not explicitly resolve this question, but he certainly provides much pertinent data in that regard. It is also, he suggested—though perhaps ironically—a *eutopia*, a *good place*.<sup>48</sup> The irony is inherent in the fact that More-the-character seems reluctant to accept most, if not all, of Hythloday’s extravagant praise of the place. What we can accept with some assurance is that *Utopia* is replete with ideas worth exploring and often suggestive of possible approaches to solutions of important social, political, and legal issues. Deciding the perennial question—*no place* or *good place*—however, requires us to come to terms with the extensive irony, wordplay, and literary puzzles with which the book is salted.

There is much dispute about the meaning and the connotations of the term *utopia* or *utopian*. In common parlance, people talk about some idea or some proposal as being “utopian,” but what they often mean is that it is idealistic but not realistic, or that it is somehow an impractical ideal. Hence, there is in fact much misunderstanding and misperception about the idea of a *utopia*.<sup>49</sup> This is an issue that we address later in this paper,<sup>50</sup> but we need to keep in mind that *utopia*

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45. UTOPIA, *supra* note 1, at 134.

46. *Id.* at vii–ix.

47. *Id.* at 142.

48. *Id.*

49. See, e.g., *Utopia*, OXFORD DICTIONARY, [http://www.oxforddictionaries.com/us/definition/american\\_english/utopia?q=Utopia](http://www.oxforddictionaries.com/us/definition/american_english/utopia?q=Utopia) (defining *Utopia* as, “An imagined place or state of things in which everything is perfect.”) (on file with *The University of the Pacific Law Review*).

50. See *infra* Part II.C.



is *no place*. It may be intended as an ideal construct, but frankly I am not sure if even that is true. It is an imaginary place constructed in such a way that it creates a sharp, almost ironic contrast with a known society, typically our own or the author's.

There are similar interpretive problems with the concept *dystopia*. The term was first used by J.S. Mill in one of his parliamentary speeches in 1868, in which he denounced the British Government's Irish land policy.<sup>51</sup> "It is, perhaps, too complimentary," he argued, to call the sponsors of this policy Utopians:

they ought rather to be called dys-topians, or caco-topians. What is commonly called Utopian is something too good to be practicable; but what they appear to favour is too bad to be practicable.<sup>52</sup>

Since that rather rarified introduction, the term has spread as a generic label for any literary depiction of an oppressive, brutal, or dehumanizing society or state. As such, it covers everything from the European episodes in Voltaire's *Candide*,<sup>53</sup> to the techno-horror of Yevgeny Zamyatin's *We*,<sup>54</sup> to such distant relatives as Huxley's *Brave New World*<sup>55</sup> and Orwell's *Nineteen Eighty-Four*.<sup>56</sup> Indeed, in popular culture today, dystopia, not utopia, seems to be the norm.

I must admit that I am uncomfortable when literary critics refer to books like *Nineteen Eighty-Four* as 'dystopias,' for two basic reasons. First, this term *dystopia* implies a distinction between utopian novels and dystopian novels that is extraordinarily misleading. More's term *utopia* means *not a place, no place, or nowhere*.<sup>57</sup> By the same token, the Greek roots of Mills's term result in *dystopia* literally meaning *bad place*.<sup>58</sup> Yet the world of Oceania in *Nineteen Eighty-Four*, or the World State in *Brave New World*, is not simply a bad place—it is a futuristic no place. If you want to see a *dystopia*, you have to read Voltaire's *Candide*. He sets *Candide*'s adventures in *real time*, with *contemporary* events driving the plot—the Seven Years' War devastates the Baron's family and estates; religious persecution wracks two hemispheres; the Lisbon Earthquake

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51. HOUSE OF COMMONS DEBATE (Hansard, Mar. 12, 1868) vol. 190, col. 1415, 1516–17 (remarks of J. Stuart Mill), available at <http://hansard.millbanksystems.com/commons/1868/mar/12/adjourned-debate> (on file with *The University of the Pacific Law Review*).

52. *Id.*

53. VOLTAIRE, *CANDIDE, OU L'OPTIMISME*, TRADUIT DE L'ALLEMAND DE M. LE DOCTEUR RALPH (1st ed. 1759). For an accessible English translation, see VOLTAIRE, *CANDIDE* (Dover Thrift Editions). For a networked digital edition with commentary and annotations, see *CANDIDE 2.0*, available at <http://candide.nypl.org/text/> (on file with *The University of the Pacific Law Review*).

54. YEVGENY ZAMYATIN, *WE* (Harper Voyager 1921). See generally George Orwell, *Review of 'WE' by E. I. Zamyatin*, available at [http://orwell.ru/library/reviews/zamyatin/english/e\\_zamy](http://orwell.ru/library/reviews/zamyatin/english/e_zamy) (on file with *The University of the Pacific Law Review*).

55. ALDOUS HUXLEY, *BRAVE NEW WORLD* (Harper Perennial Modern Classics 2006).

56. GEORGE ORWELL, *NINETEEN EIGHTY-FOUR* (Plume 2003).

57. UTOPIA, *supra* note 1, at 142.

58. *Id.* at 141.

shatters faith. The point is that this world is a bad place, and the best we can hope to do is to endure and “cultivate our garden.”<sup>59</sup> In contrast, when Candide visits El Dorado in South America,<sup>60</sup> what he finds is not a real place. El Dorado is every bit as “utopian” as More’s Utopia—or Oceania for that matter. It is fanciful, ironic, and intended to make the reader contrast the utopian space with the real world. In other words, in most of this literary tradition, it is not *utopia* versus *dystopia*; it is one fanciful utopia, for better or worse, against another.

Second, over-emphasizing a distinction between utopias and dystopias may inadvertently lead to a very simplistic reading of More’s *Utopia*. It is almost insulting to More as an author and a thinker. If it is accurate to talk about utopias and dystopias as competing approaches in this literary tradition—or perhaps as separate literary traditions—then we are saying that More’s Utopia—*i.e.* the country in the novel—is the good place, and Oceania is the bad place. That makes More a creator of a good little place, quite unlike that terrible Oceania or the World State. Such a simplistic contrast does not adequately confront More’s novel on its own terms, and we end up entertaining very simple-minded ideas about what is going on there.

The truth is that Utopia is a very scary place. A highly regimented, almost affectless population, cynical use of military power, outright slavery, unrelenting manipulation of the population—characteristics that most certainly describe life in Orwell’s war-ridden Oceania, but they also describe life in Utopia. In fact, More has provided us with a subtle and provocative literary experience that we should encounter on its own terms.

#### *B. UTOPIA as a Post-Modernist Novel*

Post-modern literature is a literary approach that is characterized by a reliance on narrative techniques such as fragmentation, paradox, and the unreliable narrator.<sup>61</sup> While post-modernism is conceived of as a literary style of the post-World War II era, in fact works in a post-modernist style exist in different time periods. Whenever a writer or artist is responding against dogmatic attitudes in rationalism or modernist aesthetics or other constrictive social influences, post-modernist sensibilities are at work.<sup>62</sup> In that sense, one could credibly make the claim that works such as Cervantes’ *Don Quixote* (1605,

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59. CANDIDE, *supra* note 53, at 1.

60. *Id.* at Chp. 18.

61. On the characteristics of postmodern literature, see LARRY MCCAFFERY, POSTMODERN FICTION: A BIO-BIBLIOGRAPHICAL GUIDE (Greenwood Press 1986). See also Dino Felluga, *General Introduction to Postmodernism*, INTRODUCTORY GUIDE TO CRITICAL THEORY (College of Liberal Arts, Purdue University), available at <http://www.cla.purdue.edu/english/theory/postmodernism/modules/introduction.html> (discussing characteristics) (on file with *The University of the Pacific Law Review*).

62. See generally MCCAFFERY, *supra* note 61.

1615)<sup>63</sup> exhibit the typical characteristics of what critics refer to as postmodern literature. I would argue that More's *Utopia* also quite clearly exhibits the characteristics of post-modern literature.

How can we ignore the fact that *Utopia* offers us not one, but arguably two unreliable narrators. "More" the character narrates the first half of the book, at a time and in a place where More the author was known to have been. Yet his expressed views—in both the first and the second half of the book—do not necessarily square with what we know of the historical More.<sup>64</sup> As to the narrator of the second half of the book—the tour of the country Utopia—can we safely ignore the fact that we are talking about a place described admiringly by a character named "Hythloday," which means "peddler of nonsense"?<sup>65</sup> What exactly do we think More the author had in mind when he picked that name?

The fragmentation of the narrative is also quite striking. The two separable parts, their two distinct environments, the "slippage" between narration, commentary by the other narrator, and the inability to agree upon a final assessment of Utopia makes for a markedly fragmented work. It also offers a very sophisticated approach to exposition.

Paradox and irony also abound in the novel. A lawyer-author fashioning a narrator who extols Utopia's limited number of laws and its complete absence of lawyers<sup>66</sup> should certainly cause some earnest attention on the part of the reader. Even more fundamentally, despite superficial assumptions about the ideal and admirable nature of Utopia and its citizens, you must ask yourself, honestly, would you really want to live in the kind of society that More's book describes—any more than you would want to live in Oceania, with its constant state of war?

There is paradox aplenty. While there is little doubt that More was a religious man, there is certainly no indication that Hythloday was, and it is he who admires Utopia so much, not More.<sup>67</sup> To the contrary, More the character equivocates over the things that Hythloday describes and suggests that he has serious, if unarticulated, problems with the state of things in Utopia.<sup>68</sup>

Simply put, you should wrap your mind around the fact that, in a very real sense, *Utopia*—though five centuries old—is in fact a post-modernist novel. It is hyper-aware of itself as a work of fiction. It is written by a man who paradoxically inserts himself into the novel as narrator, but always with a heavy dose of irony. Consider: What is it that More-the-author has More-the-character say in the "letter" that begins the novel? "I would rather say something

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63. See, e.g., E.C. GRAF, *CERVANTES AND MODERNITY: FOUR ESSAYS ON DON QUIXOTE* 1, 22 (Rosemount Publishing 2007) (characterizing Cervantes as postmodern).

64. ACKROYD, *supra* note 22.

65. *UTOPIA*, *supra* note 1, at vii.

66. *Id.* at 101.

67. *Id.* at 143.

68. *Id.* at 134–35.

inaccurate than tell a lie, because I would rather be honest than clever.”<sup>69</sup> You have to ask yourself, what is More-the-author doing, and what is More-the-character saying? What could be more clever than that?”

### C. *Kidnapping a Concept*

Ignoring the complexity and subtlety of this post-modern novel has allowed many to pass over More’s achievement and to treat *Utopia* as a very simple literary work. Perhaps neglect of the novel’s deep texture has made it easier to transform *utopia* over the course of time from a fictional place to a concept independent and detached from the novel. The extent of this detachment is, nevertheless, remarkable.

To examine the extent to which the concept *utopia* has been kidnapped in contemporary discourse, I undertook an empirical examination of the usage of the term *utopia* and related terms in current news media. In identifying and analyzing usage of the terms *utopia*, *utopian*, *dystopia*, and *dystopian*, I adhered to certain rubrics for linguistic data analysis.<sup>70</sup> First, I confined the analysis to daily or other periodic news media available through three cross-cutting Westlaw™ searches.<sup>71</sup> This was intended to standardize the scope of the data search, while minimizing the likelihood of gaps in the scope of any one of the three searches.

Second, only references in English, in English-language news media, were included. This restriction was intended to minimize ambiguity in interpreting the data.

Third, I excluded any usage of a subject term as a proper noun. My concern here was that such usage would implicate a user’s subjective connotations or intentions, which in many cases could not be objectively identified from analysis of the text itself. The likelihood of error in discerning the usage of the term in context would have increased significantly.<sup>72</sup>

The study was conducted over an eight-month period (May 2015–January 2016), yielding 92 media sources<sup>73</sup> using an aggregate total of 494 references to any one of the searched terms.<sup>74</sup> Daily usage varied markedly over the search

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69. *Id.* at 5.

70. See Appendix I, *infra* (detailing rubrics for linguistic data analysis used in this study).

71. See *infra* note 107 (indicating search formulations).

72. So, for example, the analysis excluded such instances as *Dog Racing—Derby Lane*, TAMPA TRIBUNE (Jan 13, 2016), available at 2016 WLNR 1103365 (noting eighth place showing for “Hashtag Utopia”) (on file with *The University of the Pacific Law Review*); *Agents eager to kickstart 2016 property market with offers and incentives*, REAL ESTATE MONITOR WORLDWIDE (Jan. 18, 2016), available at 2016 WLNR 1626422 (describing promotional efforts of Northern Beaches agency Utopia Real Estate) (on file with *The University of the Pacific Law Review*).

73. See *infra* Table 1 (identifying media sources).

74. See *infra* Table 2 (providing chronology of incidences of terms).

period,<sup>75</sup> with a mean average daily usage of 2.041 references.<sup>76</sup> Of the 92 media sources, the five sources with the highest incidence of references to the searched terms were all prominent national and international sources, and—with the exception of Daily News and Analysis, an English-language broadsheet published in Mumbai, India—all were U.S.-based sources.<sup>77</sup>

The critical issue in the linguistic analysis was determining the meaning and connotation to be ascribed to each reference. In the abstract, the term *Utopia* or *utopia* is typically defined as “an imaginary island described in Sir Thomas More’s *Utopia* (1516) as enjoying perfection in law, politics, etc.”<sup>78</sup> A typical second definition of the term, usually in lowercase, is “an ideal place or state.”<sup>79</sup> A more derivative third definition typically given for the term is “any visionary system of political or social perfection.”<sup>80</sup> In actual incidences over the eight-month period, however, the usage of the term *Utopia* or *utopia* varied considerably beyond these basic definitions.<sup>81</sup>

Ironically, at no time during the eight-month period did any news account use the term *Utopia* in its primary sense as referring to the island in More’s book.<sup>82</sup> Of the 236 references to the term, 179 references use it in the sense of an “ideal place or state” (98 references) or “paradise” (81).<sup>83</sup> The remaining references connote even more strongly the unreality or fanciful nature of the concept—“visionary political or social system” (19 references), “dream” or “ideal” (16), “imaginary place or state” (14), or “unrealistic place” (8).<sup>84</sup>

The related term *utopian*, as a noun, is typically defined as “an inhabitant of Utopia.”<sup>85</sup> A typical second definition of the term, usually in lowercase, would be “an ardent but impractical political or social reformer; visionary; idealist.”<sup>86</sup> Actual usage of the term *utopian* as a noun during the eight-month period

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75. See *infra* Figure 1 (providing graph of daily incidences).

76. *Id.*

77. See *infra* Table 1 (These top five sources were: the Washington Post (65 total incidences); the New York Times (50); Boston Globe (42); the Los Angeles Times (34); the Chicago Tribune (26); Daily News and Analysis (18)).

78. *Utopia*, DICTIONARY.COM, available at <http://dictionary.reference.com/browse/utopia?s=t> (on file with *The University of the Pacific Law Review*).

79. *Id.*

80. *Id.*

81. See *infra* Figure 2 (detailing usage and meaning of term *Utopia* or *utopia*).

82. After I had submitted this article to the Law Review, my search process found such a usage. See Ken Baumann, *Empires and ideas do battle*, LOS ANGELES TIMES, Feb. 7, 2016, Sunday Calendar Section 1, 6 (discussing Alvaro Enrique’s *Sudden Death*, reviewer describes an educated European’s attempt “to better the lot of indigenous Mexicans by ordering them to re-create the satirical society of Thomas More’s ‘Utopia,’ a fiction that apes the indigenous culture in place before the arrival of European “humanism” to Mexico”).

83. *Infra* Figure 2.

84. *Id.*

85. *Utopian*, DICTIONARY.COM, available at <http://dictionary.reference.com/browse/utopian?s=t> (on file with *The University of the Pacific Law Review*).

86. *Id.*

clustered around the second of these two basic definitions.<sup>87</sup> Of the 27 references to the term, 19 references use it in the sense of an “idealist.”<sup>88</sup> The remaining 8 references use it as a synonym for “visionary.”<sup>89</sup>

Used as an adjective, the term *utopian* is typically defined as “of, relating to, or resembling Utopia, an idealized imaginary island described in Sir Thomas More’s *Utopia* (1516).”<sup>90</sup> A typical second definition of the term would be “founded upon or involving idealized perfection.”<sup>91</sup> A more derivative third definition typically given for the term is “given to impractical or unrealistic schemes of such perfection.”<sup>92</sup> As with the term *Utopia* or *utopia*, however, in actual incidences over the eight-month period the usage of the term *utopian* varied considerably beyond these basic definitions.<sup>93</sup>

At no time during the eight-month period did any news account use the adjectival term *utopian* in its primary sense as referring to the island in More’s book. Of the 179 references to the term, 47 references use it in the sense of “idealistic.”<sup>94</sup> Many of the remaining references connote some variant positive meaning of the term—“ideal” (34 references), “of idealized perfection” (19), “perfect” (16), or “visionary” (11).<sup>95</sup> However, another group of references carried a decidedly negative connotation—“unrealistic” (32 references), or “of impractical or unrealistic scheme” (20).<sup>96</sup>

It is particularly interesting that the use of the term *utopian* in public media has detached itself almost entirely from the book. For example, the cover story for the Sunday New York Times Magazine of November 15, 2015—“The Future Issue”—used the term *utopian* as one possible alternative on a wheel of fortune predicting the future. (Figure 7, *infra*.) It is perhaps the only alternative among all the adjectives describing possible futures that is almost entirely dependent upon context to give it meaning. The reader may have some basic understanding about what is meant by describing the future as “doomed” or “violent” or “peaceful,” but a *utopian* future requires explanation before we can decide whether we would want to live there.

The term *utopian* is used frequently—one might even say glibly—by the news media with an implicit suggestion that the term requires no explanation. Thus, exactly two weeks after “The Future Issue,” the term featured prominently

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87. See *infra* Figure 3 (detailing usage and meaning of term *utopian* as noun).

88. *Id.*

89. *Id.*

90. *Utopian*, DICTIONARY.COM, available at <http://dictionary.reference.com/browse/utopian?s=t> (on file with *The University of the Pacific Law Review*).

91. *Id.*

92. *Id.*

93. See *infra* Figure 4 (detailing usage and meaning of term *utopian* as adjective).

94. *Id.*

95. *Id.*

96. *Id.*

on the cover of the Sunday New York Times Magazine of November 29, 2015, covering Kurdish insurgency in Syria. (Figure 8, *infra*.) The cover refers to “A Dream of Utopia in Hell,” but readers are left to their own devices in trying to discern a specific meaning for this phrase.<sup>97</sup>

Of course, the terms *dystopia* and *dystopian* carry more overtly negative connotations. In particular, *dystopia* is typically defined as, “An imaginary place or state in which the condition of life is extremely bad, as from deprivation, oppression, or terror.”<sup>98</sup> Self-reflexively, a typical second definition of the term is, “A work describing such a place or state.”<sup>99</sup> The adjectival term *dystopian* carries similar connotations. It is typically defined as “of or relating to a dystopia,”<sup>100</sup> or “dire; grim.”<sup>101</sup> In sharp contrast with the terms *utopia* and *utopian*, however, over the eight-month period the terms *dystopia* and *dystopian* exhibited little variation in meaning among the actual incidences of usage.<sup>102</sup>

Thus, of the 30 references to the term *dystopia*, 21 references use it in the sense “oppressive or miserable society or political system.”<sup>103</sup> The remaining 9 references use the term *dystopia* to mean “nightmare.”<sup>104</sup> Likewise, of the 23 references to the term *dystopian*, 12 references use it to mean “of oppressive or miserable society or political system.”<sup>105</sup> The remaining 11 references use it to mean “nightmarish.”<sup>106</sup>

### III. CONCLUSION

More’s novel is a richer and more sophisticated literary achievement than we may realize, despite simplistic characterizations of the work in traditional literary criticism. This richness has been obscured by the kidnapping of the concept *utopia* by both literary successors and popular culture. Five hundred years out, it is time to reread and recapture this literary and legal classic on its own terms.

### APPENDIX: RUBRICS FOR LINGUISTIC DATA ANALYSIS

In identifying and analyzing usage of the terms *utopia*, *utopian*, *dystopia*, and *dystopian*, the follow rules were observed.

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97. *Id.*

98. *Dystopia*, FREEDICTIONARY.COM, available at <http://www.thefreedictionary.com/dystopia> (on file with *The University of the Pacific Law Review*).

99. *Id.*

100. *Id.*

101. *Id.*

102. See *infra* Figures 5–6 (detailing usage and meaning of terms *dystopia* and *dystopian*, respectively).

103. *Infra* Figure 5.

104. *Id.*

105. *Infra* Figure 6.

106. *Id.*

1. Only daily or other periodic news media available through Westlaw™ were searched.<sup>107</sup>
2. Only references in English, in English-language news media, were included.
3. Any usage of a subject term as a proper noun was excluded.

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107. The scope of the searches and the formulation of the search terms was as follows:

<u>Search</u>	<u>Selected Content</u>	<u>Search Terms</u>	<u>Frequency</u>
<i>all utopia</i>	Journals Magazines & Newsletters, Major Newspapers	utopia or utopian	Daily
<i>NYT utopia</i>	International New York Times	utopia or dystopia & da(aft April 2015)	Daily
<i>utopia</i>	Major Newspapers, International New York Times	utopia! or dystopia!	Daily



TABLE 1: SOURCES

Source	utopia-	dystopia-
14U News	1	1
Alaska Dispatch	1	
ArabianBusiness.com	2	
ArabianMoney.net	1	
Architects' Journal	2	
Architectural Review	3	
Arutz Sheva (Israel)	1	
Atlanta Journal-Constitution, The	3	2
Austin American-Statesman	2	
Australian Magazine, The	1	
Bizcommunity.com	1	
Blade, The	1	
Boston Globe	34	8
Brunch (India)	1	
BRW (Business Review Weekly)	2	
Buffalo News	6	1
Business Day (South Africa)	4	
Chicago Tribune	23	3
Daily News (Los Angeles, CA)	6	1
Daily News & Analysis	18	
Daily News Sri Lanka	4	
Dayton Daily News	4	
Deal (Australia)	1	
Dissident Voice	5	
DownWithTyranny	2	
e27 News	2	
Economist, The	1	
eTurboNews	3	
EIU ViewsWire	2	
Ekantipur.com	7	
Energy Monitor Worldwide	2	
Eurasia Review	12	
Event	1	1
Financial Services Monitor Worldwide	3	
Grocer	1	
Honolulu Civil Beat	3	
Horticulture Week	1	
Houston Chronicle	3	

Source	utopia-	dystopia-
ICT Monitor Worldwide	1	
Indian Currents	5	
IntelligentHQ	2	
Investor's Business Daily	9	
iOwnTheWorld.com	1	
ITP.net	1	
Jpost.com	10	
Just-auto	1	
Kirkus Reviews	1	
Leisure & Hospitality Monitor		
Worldwide	2	
Los Angeles Times	29	5
Management Today	1	
Marketers Media	1	
Marketing	3	1
Mena Report	1	
Merinews (India)	2	
Milwaukee Journal Sentinel	8	4
New African	1	
New Europe	2	
New Jersey Spotlight	1	
New Orleans Times Picayune	6	
New York Times, The*	45	5
Newsday (USA)	9	5
Next Web, The	1	
Nursing Times (UK)	1	
Oil & Gas News	1	
Oregon Historical Quarterly	1	
Pakistan and Gulf Economist	1	
Palestine Chronicle	1	
PA Pundits	3	
People (UK)	3	
Pittsburgh Post-Gazette	6	4
Planning (UK)	2	
Real Estate Monitor Worldwide	1	
Retailcustomerexperience.com	2	
Retirement Planner	1	
Ridenbaugh Press	1	
Seattle Times, The	6	

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\* Includes entries from The New York Times International edition (30 / 2)

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Source	utopia-	dystopia-
Sky News (UK)	1	
Slugger O'Toole	1	
Sudan Tribune 2		
Sunday Telegraph Magazine	2	
Tampa Tribune	8	1
Tech City News	1	
Tehelka	1	
Telecom Asia	2	
TheDailyBeast.com	1	
USA Today (USA)	5	
Utilities Monitor Worldwide	1	
Virginia Pilot and Ledger	2	
Washington Post	56	9
Week UK, The	1	
Wish Magazine	2	
Yerepouni Daily News (Lebanon)	14	
TOTALS	442	52*

TABLE 2: CHRONOLOGY OF INCIDENTS

Year	Date	utopia-	dystopia-
2006	1-Jan*	3	
2015	20-Mar*	3	1
	18-May	1	
	23-May	1	1
	24-May	3	
	25-May	1	
	26-May	3	
	27-May	2	
	29-May	5	
	31-May	3	
	4-Jun	3	
	5-Jun	2	
	6-Jun	2	
	7-Jun	3	
	8-Jun	3	
	10-Jun	2	
	12-Jun	1	
	13-Jun	1	
	14-Jun	3	
	15-Jun	2	
	16-Jun	1	
	17-Jun	2	
	18-Jun	1	
	20-Jun	1	
	21-Jun	12	
	22-Jun	8	
	23-Jun	1	
	24-Jun	2	
	25-Jun	4	
	28-Jun	3	
	2-Jul	1	
	3-Jul	1	
	5-Jul	3	
	6-Jul	9	
	7-Jul	1	1
	8-Jul	2	1
	9-Jul	7	
	10-Jul	2	

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\* Control samples.

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Year	Date	utopia-	dystopia-
	11-Jul	2	
	12-Jul	3	
	13-Jul	2	
	14-Jul	1	
	15-Jul	1	
	16-Jul	1	
	17-Jul	1	
	18-Jul	5	
	19-Jul	9	
	20-Jul	2	
	21-Jul	4	
	22-Jul	2	
	23-Jul	4	1
	24-Jul	5	
	26-Jul	2	
	28-Jul	1	
	29-Jul	3	
	31-Jul	1	
	1-Aug	4	
	2-Aug	3	
	3-Aug	1	1
	4-Aug	1	
	5-Aug	2	
	6-Aug	2	
	7-Aug	2	
	8-Aug	2	1
	9-Aug	5	
	10-Aug	1	
	11-Aug	2	1
	12-Aug	1	
	13-Aug	1	
	14-Aug	2	1
	15-Aug	3	
	16-Aug	4	
	18-Aug	1	
	19-Aug	1	
	20-Aug	2	
	21-Aug	3	1
	22-Aug	2	
	23-Aug	1	
	24-Aug	1	

Year	Date	utopia-	dystopia-
25-Aug		1	
26-Aug		2	
27-Aug		1	1
28-Aug		4	
1-Sep		2	
3-Sep		4	1
4-Sep		2	
6-Sep		5	
7-Sep		3	1
8-Sep		7	
10-Sep		2	
11-Sep		2	
12-Sep		1	
13-Sep		4	
14-Sep		5	1
15-Sep		1	
17-Sep		2	
18-Sep		1	1
20-Sep		4	
21-Sep		1	
22-Sep		3	
23-Sep		1	
24-Sep		1	
25-Sep		1	
26-Sep		1	1
27-Sep		4	2
28-Sep		5	
29-Sep		3	2
1-Oct		2	
2-Oct		1	
3-Oct		1	
4-Oct		1	1
5-Oct		4	
6-Oct		2	
7-Oct		3	
8-Oct		4	1
9-Oct		1	
10-Oct		4	
11-Oct		4	4
12-Oct		1	
13-Oct		1	
14-Oct		3	

*2016 / UTOPIA and the Law and Literature Movement*

Year	Date	utopia-	dystopia-
15-Oct		2	
16-Oct		2	
17-Oct		3	1
18-Oct		4	1
22-Oct		1	
25-Oct		5	1
26-Oct		4	1
28-Oct		1	1
29-Oct		1	
30-Oct		1	
31-Oct		2	
1-Nov		1	
2-Nov		5	1
3-Nov		2	
4-Nov		1	
5-Nov		3	
6-Nov		1	
7-Nov		3	
8-Nov		5	
9-Nov		3	
12-Nov		2	1
13-Nov		1	3
14-Nov		3	1
15-Nov		3	
18-Nov		1	2
20-Nov		4	3
21-Nov		2	
22-Nov		3	1
23-Nov		1	
25-Nov		2	
27-Nov		2	
28-Nov		3	
29-Nov		4	
1-Dec		1	
3-Dec		1	
13-Dec		8	
28-Dec		3	
29-Dec		3	
30-Dec		2	
2016	1-Jan		6
2-Jan		2	
3-Jan		3	

Year	Date	utopia-	dystopia-
4-Jan		2	
5-Jan		3	2
6-Jan		2	
7-Jan		6	1
8-Jan		2	
9-Jan		1	
10-Jan		2	
11-Jan		2	
13-Jan		1	
14-Jan		2	
16-Jan		2	
17-Jan		3	1
TOTALS		442	52



FIGURE 1—DAILY INCIDENCE

May 2015—January 2016

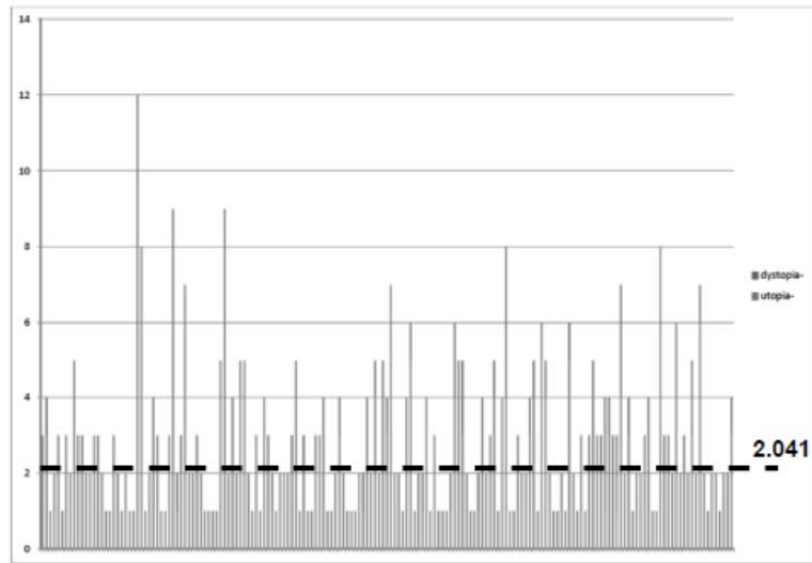


FIGURE 2—USAGE: *UTOPIA* OR *UTOPIA*

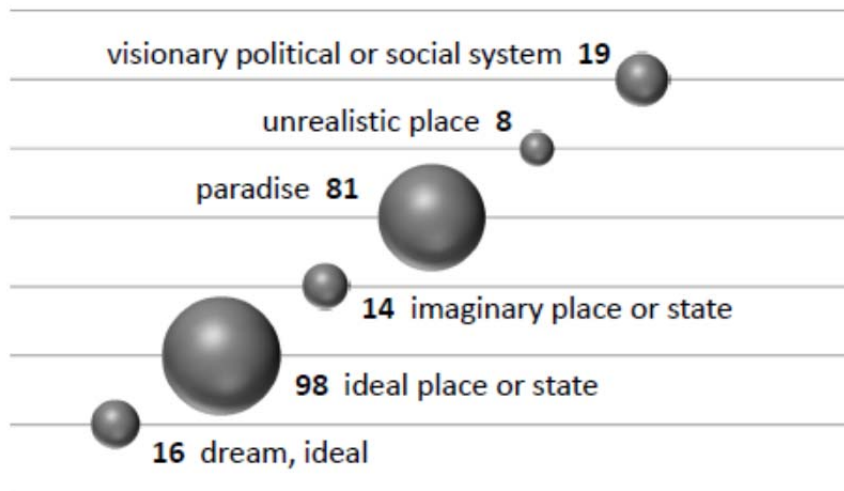


FIGURE 3—USAGE: *UTOPIAN*, N.

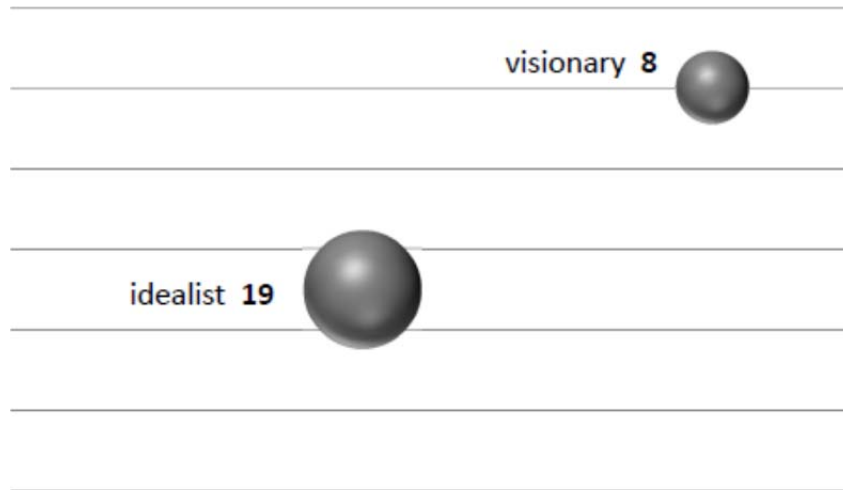


FIGURE 4—USAGE: *UTOPIAN*, ADJ.

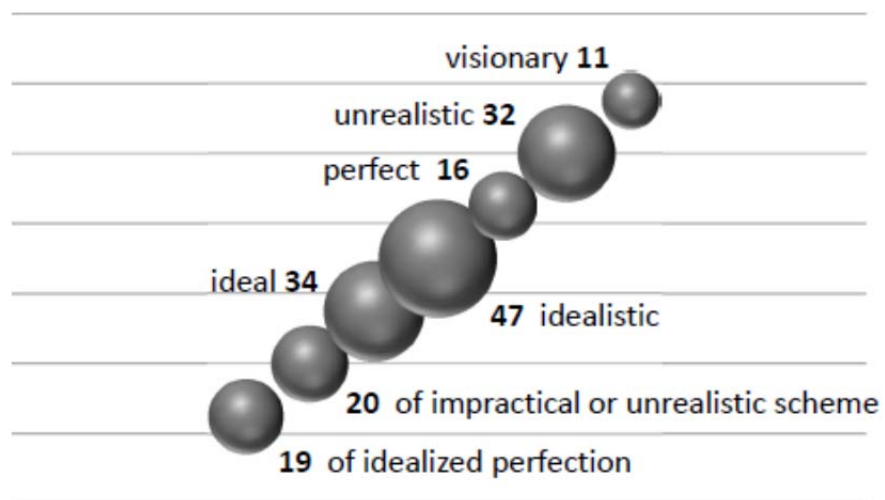


FIGURE 5—USAGE: *DYSTOPIA*

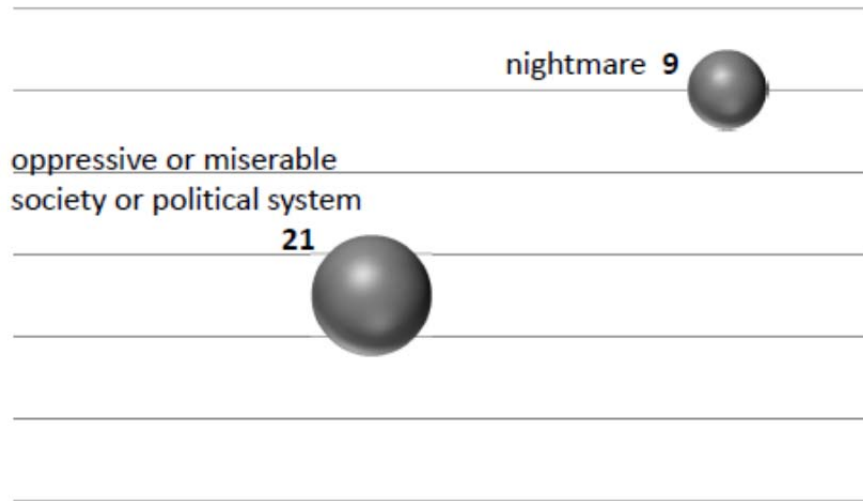


FIGURE 6—USAGE: *DYSTOPIAN*

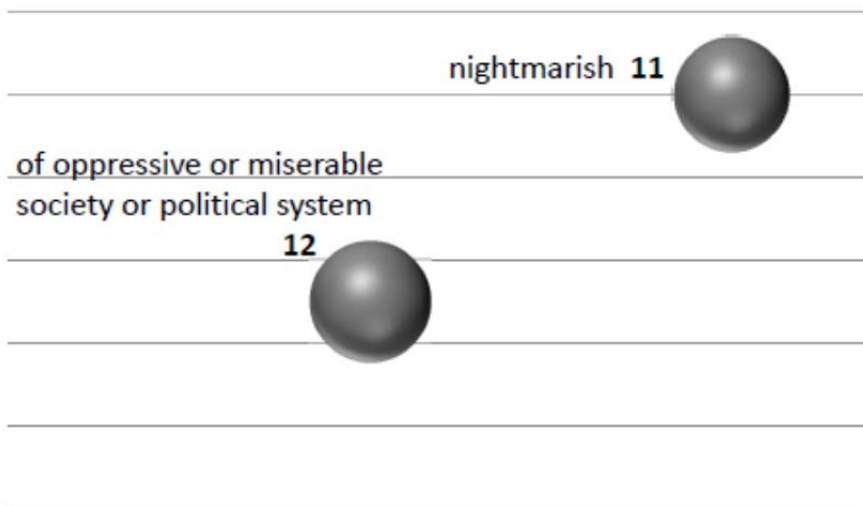


FIGURE 7—WHEEL OF FORTUNE

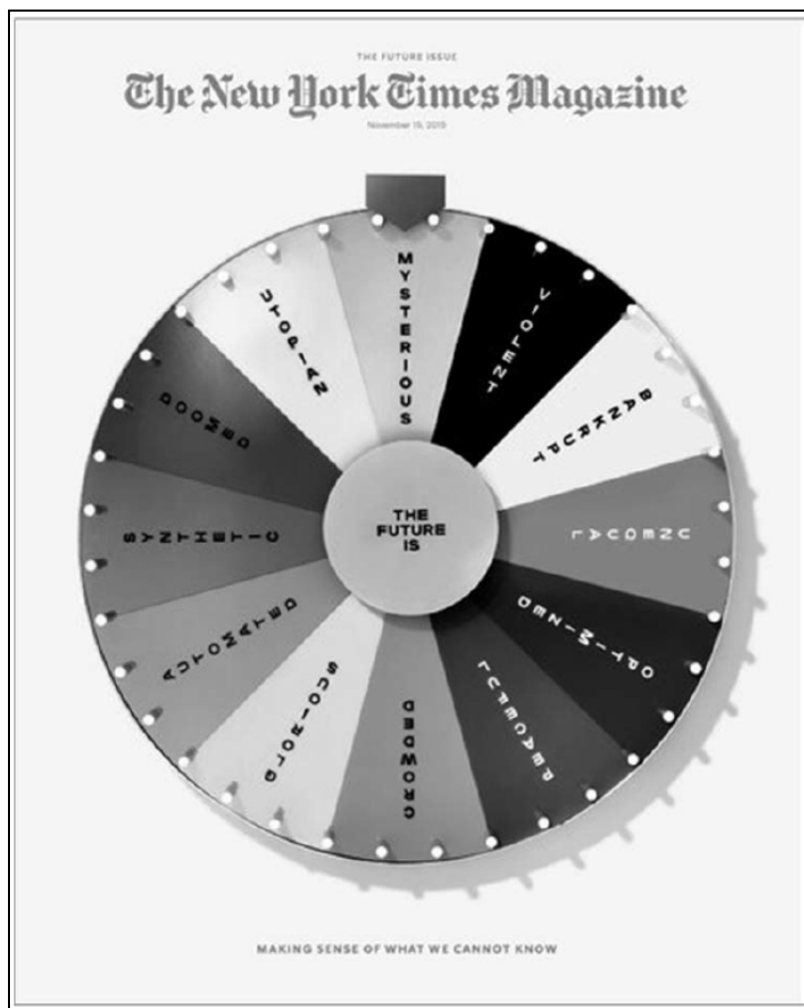


FIGURE 8—KURDISH INSURGENCY

